



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2013-0208; FRL-9825-7]

Approval and Promulgation of Implementation Plans; State of Missouri; Infrastructure SIP Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of four Missouri State Implementation Plan (SIP) submissions. EPA is approving portions of two SIP submissions addressing the applicable infrastructure requirements of the Clean Air Act (CAA) for the 1997 and 2006 National Ambient Air Quality Standards (NAAQS) for fine particulate matter (PM_{2.5}). These infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. EPA is also taking final action to approve two additional SIP submissions from Missouri, one addressing the Prevention of Significant Deterioration (PSD) program in Missouri, and another addressing the requirements applicable to any board or body which approves permits or enforcement orders of the CAA, both of which support

requirements associated with infrastructure SIPs. The rationale for this action is explained in this notice and in more detail in the notice of proposed rulemaking for this action, which was published on April 10, 2013.

DATES: This rule will be effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established docket number EPA-R07-OAR-2013-0208 for this action. All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219 from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Bhesania, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219; telephone

number: (913) 551-7147; *fax number:* (913) 551-7065; *email address:* bhesania.amy@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we refer to EPA. This section provides additional information by addressing the following:

- I. Background and Purpose
- II. EPA's Responses to Comments
- III. Summary of EPA Final Action
- IV. Statutory and Executive Order Review

I. Background and Purpose

On April 10, 2013, EPA proposed to approve four Missouri SIP submissions (78 FR 21281). EPA received the first submission on February 27, 2007, addressing the infrastructure SIP requirements relating to the 1997 PM_{2.5} NAAQS. EPA received the second submission on December 28, 2009, addressing the infrastructure SIP requirements relating to the 2006 PM_{2.5} NAAQS. As originally detailed in the proposed rulemaking, EPA had previously approved section 110(a)(2)(D)(i)(I) and (II) - Interstate and international transport requirements of Missouri's February 27, 2007, SIP submission for the 1997 PM_{2.5} NAAQS (72 FR 25975, May 8, 2007); and EPA disapproved section 110(a)(2)(D)(i)(I) - Interstate and international transport requirements of Missouri's December 28, 2009, SIP submission for the 2006 PM_{2.5} NAAQS (76 FR 43156, July 20, 2011). Therefore, in the April 10, 2013, proposed

action, we did not propose to act on those portions since they have already been acted upon by EPA. With this final action, we will have acted on both the February 27, 2007, and the December 28, 2009, submissions in their entirety, excluding those provisions that are not within the scope of today's rulemaking as identified in section IV of the April 10, 2013, proposed action for both the 1997 and 2006 PM_{2.5} infrastructure SIP submissions.

The third submission was received by EPA on September 5, 2012. This submission revises Missouri's rule in Title 10, Division 10, Chapter 6.060 of the Code of State Regulations (CSR) (10 CSR 10-6.060) "Construction Permits Required" to implement certain elements of the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}) - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" rule (75 FR 64864, October 20, 2010). On March 19, 2013, Missouri amended and clarified its submission so that it no longer included specific provisions affected by the January 22, 2013, U.S. Court of Appeals for the District of Columbia court decision which vacated and remanded the provisions concerning implementation of the PM_{2.5} SILs and vacated the provisions adding the PM_{2.5} SMC that were promulgated as part of the October 20, 2010, PM_{2.5} PSD

Rule (*Sierra Club v. EPA*, No. 10-1413 (filed December 17, 2010)). In addition, this rule amendment defers the application of PSD permitting requirements to carbon dioxide emissions from bioenergy and other biogenic stationary sources.

EPA received the fourth submission on August 8, 2012. This submission addresses the conflict of interest provisions in section 128 of the CAA as it relates to element E of the infrastructure SIP.

In summary, EPA is taking final action today to approve these four SIP submissions from Missouri. The first two submissions addressed the requirements of CAA sections 110 (a)(1) and (2) as applicable to the 1997 and 2006 NAAQS for $PM_{2.5}$. With this final action, we will have acted on both the 1997 and 2006 submissions in their entirety excluding those provisions that are not within the scope of the rulemaking. EPA is also taking final action to approve two additional SIP submissions from Missouri, one addressing the Prevention of Significant Deterioration (PSD) program in Missouri as it relates to $PM_{2.5}$, unless otherwise noted in EPA's proposed action on April 10, 2013 (78 FR 21281), and another SIP revision addressing the requirements of section 128 of the CAA, both of which support the requirements associated with infrastructure

SIPs.

In today's action, EPA also acknowledges an administrative error in our April 10, 2013 proposal. Under section V, within EPA's analysis of the state's submittal for element E related to infrastructure SIP requirements, we referenced that both sections 643.040.2 and 105.450 were a part of the "Air Conservation" chapter of the Missouri Revised Statutes. Through today's action, EPA acknowledges that section 105.450 is not a part of the "Air Conservation" chapter, but instead is a part of the "Public Officers and Employees—Miscellaneous Provisions" chapter of the Missouri Revised Statutes. No changes were made based on this correction.

We also note that within the April 10, 2013, proposed rulemaking, we relied upon a separate direct final action from April 2, 2013¹, to demonstrate that Missouri met all the requirements of element C of the infrastructure SIP (78 FR at 21286). EPA received no comments on this direct final action, and therefore this SIP revision became effective on June 3, 2013.

II. EPA's Responses to Comments

The public comment period on EPA's proposed rule opened April 10, 2013, the date of its publication in the **Federal**

¹ Approval and Promulgation of Implementation Plans and Operating Permits Program, State of Missouri (78 FR 19602).

Register, and closed on May 10, 2013. During this period, EPA received three comment letters: one from a citizen received April 18, 2013; one from the Sierra Club and Earthjustice received May 10, 2013 (hereinafter "Sierra Club"); and one from the National Parks Conservation Association received May 10, 2013 (hereinafter "NPCA"). All three letters are available in the docket to today's final rule. The citizen comment was made in support of EPA's action, and we appreciate the support for this rulemaking. No changes were made to this final action based on this comment. The remaining two letters contained some similar comments, and therefore we have grouped those similar comments into single comments and responses where appropriate.

Comment 1: The Sierra Club contends that Missouri's infrastructure SIP submissions for the 1997 and 2006 PM_{2.5} NAAQS do not meet the requirements of section 110(a)(2)(A). First, the commenter suggests that the SIP submissions are deficient because the state relies "on general, existing statutory and regulatory authority in lieu of developing specific new requirements tailored to ensure that the 1997 and 2006 PM_{2.5} NAAQS is maintained and enforced." Second, the Commenter suggests that certain existing provisions in Missouri's SIP and relied upon in the SIP submissions may be insufficiently specific to be enforceable emissions limits. In support of the latter concern,

the Commenter cites the court decision in *McEvoy v. IEI Barge Services*, 622 F.3d 671 (7th Cir. 2010) for the proposition that "some (but not all) courts have suggested that only an emissions limitation that specifically 'limits the quantity, rate, or concentration of emissions,' can be an 'enforceable emission limitation'" under the CAA. The implication of this comment is that only an emissions limitation that is sufficiently specific could meet the legal requirements of section 110(a)(2)(A) for purposes of enforcement, and thus for purposes of an infrastructure SIP submission as well.

Response 1: EPA disagrees with the Sierra Club's contention that Missouri's infrastructure SIP submissions are not approvable with respect to section 110(a)(2)(A) because they do not contain "new requirements" for the 1997 and 2006 PM_{2.5} NAAQS. Similarly, EPA disagrees with the Commenter's view that the existing provisions of the Missouri SIP are not enforceable emissions limitations for purposes of the 1997 and 2006 PM_{2.5} NAAQS.

With respect to the concerns about the reliance on general, existing statutory and regulatory authority to meet the requirements of section 110(a)(2)(A) in lieu of developing specific new requirements, the Sierra Club is incorrect with respect to the scope of what is germane to an action on an infrastructure SIP. This rulemaking pertains to EPA's action on

infrastructure SIP submissions, which must only establish that the state's SIP meets the general structural requirements described in section 110(a)(2)(A) for the NAAQS at issue. That section states that each implementation plan submitted by a State under the CAA shall include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act. In the context of an infrastructure SIP submission, states may establish that they have sufficient SIP provisions for this purpose through existing SIP provisions, through newly submitted SIP provisions, or through a combination of the two.

The Commenter seems to believe that in the context of an infrastructure SIP submission, section 110(a)(2)(A) explicitly requires that a state adopt all possible new enforceable emission limits, control measures and other means developed specifically for attaining and maintaining the new NAAQS within the state. EPA does not believe that this is a reasonable interpretation of the provision with respect to infrastructure SIP submissions. Rather, EPA believes that different requirements for SIPs become due at different times depending on the precise applicable requirements

in the CAA. For example, SIP submissions that may contain new emissions limitations for purposes of attaining and maintaining the NAAQS are required pursuant to CAA section 172(b), as part of an attainment demonstration for areas designated as nonattainment for the NAAQS. The timing of such an attainment demonstration would be after promulgation of a NAAQS, after completion of designations, and after development of the applicable nonattainment plans, *i.e.*, long after the time when section 110(a)(1) requires an infrastructure SIP submission.

The Sierra Club comment suggests that EPA should disapprove a state's infrastructure SIP submission if the state has not already developed all the substantive emissions limitations that may ultimately be required for all purposes, such as attainment and maintenance of the NAAQS as part of an attainment plan for a designated nonattainment area. Instead, for purposes of section 110(a)(2)(A), and for purposes of an infrastructure SIP submission, EPA believes the proper inquiry is whether the state has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon it. EPA does not interpret section 110(a)(2)(A) to require states in an infrastructure SIP submission to have developed and submitted the full range of emissions limits that may ultimately be necessary for purposes of attainment and maintenance of the NAAQS within the state. As

explained in the proposal, EPA has concluded that Missouri has adequately established that it has met basic requirements for implementation, maintenance, and enforcement of the 1997 and 2006 PM_{2.5} NAAQS through the existing SIP provisions identified in the proposal.

With respect to the Sierra Club's concerns about Missouri's use of "broad provisions" in its SIP to address the requirements of section 110(a)(2)(A), EPA has reviewed Missouri's statutes and regulations in light of the *McEvoy* court decision noted by the Commenter. EPA acknowledges the Commenter's concern that SIP provisions must contain sufficient specificity, so that the regulated community, regulators, and members of the public can clearly ascertain what is required of sources, and so that enforcement can occur in the event of violations. EPA believes that the Court's decision in *McEvoy* is limited to the specific facts and circumstances of that case, but nevertheless reflects what may happen in an enforcement proceeding if a given SIP provision is ultimately deemed insufficiently specific to be enforceable. However, based on a review of the provisions at issue, we conclude that Missouri has sufficiently specific statutory and regulatory provisions in place to meet the requirements of section 110(a)(2)(A) for purposes of an infrastructure SIP submission.

As we noted in the proposed rulemaking and as Sierra Club acknowledges, RsMO section 643.050.1(1)(b) gives the Missouri Air Conservation Commission the authority to adopt, promulgate, amend and repeal rules and regulations that establish "maximum quantities of air contaminants that may be emitted from any air contaminant source." Pursuant to that authority, Missouri has adopted ambient air quality standards at 10 CSR 10-6.010 that mirror the 1997 PM_{2.5} annual and 2006 PM_{2.5} 24-hour NAAQS, along with the NAAQS for other criteria pollutants such as sulfur dioxide, carbon monoxide, ozone, lead and nitrogen dioxide. The regulations at 10 CSR 10-6.020(3)(A) provide specific emissions limits for PM_{2.5} and other pollutants. *See also* 10 CSR 10-6.060(11) (providing maximum allowable increases of particulate matter in Class I, Class II, and Class III areas in Missouri).

The regulations at 10 CSR 10-6.030(5) provide specific requirements for sampling the concentration of particulate matter emissions from sources; these requirements specifically incorporate by reference the test methods contained in 40 CFR part 60, appendix A and 40 CFR part 51, appendix M. Furthermore, the regulations at 10 CSR 10-6.040(4) provide reference methods for determining the concentration of particulate matter necessary for the enforcement of air pollution control regulations

throughout Missouri. These regulations incorporate by reference the standards found at 40 CFR part 50.

EPA also notes that the Missouri air pollution control regulations contain specific requirements concerning the control of particulate matter. See, e.g., 10 CSR 10-6.170 (Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin); 10 CSR 10-6.400 (Restriction of Emission of Particulate Matter From Industrial Processes); 10 CSR 10-6.405 (Restriction of Particulate Matter Emissions From Fuel Burning Equipment Used for Indirect Heating).

Furthermore, Missouri's regulations require that operating permits issued to sources contain specific "emissions limitations or standards applicable to the installation" and "operational requirements or limitations as necessary to assure compliance with all applicable requirements." 10 CSR 10-6.065(6)(C)1. Thus, in addition to the emission limitations applicable to sources through the generally applicable provisions of the SIP, sources that are required to obtain permits will have additional legally enforceable requirements to meet specific emission limitations, control measures, or other restrictions as appropriate.

Coupled with the enforcement authority provided by Missouri's statutes and regulations, which provides MDNR the authority to issue compliance orders or assess administrative

penalties for violations of any emissions limitations of the SIP, EPA continues to believe that Missouri has sufficient authority to address the requirements of section 110(a)(2)(A) for the 1997 and 2006 PM_{2.5} NAAQS.

Comment 2: The Sierra Club and NPCA commented that emission reductions from the Clean Air Interstate Rule (CAIR) are not permanent and enforceable and therefore EPA cannot rely on CAIR to satisfy the requirements of CAA section 110(a)(2)(D)(i)(II) - prong 4. Sierra Club argued that in light of the remand of the rule by the D.C. Circuit Court of Appeals in *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008), CAIR is neither permanent nor enforceable. Sierra Club also states that EPA has acknowledged in other Federal Register notices that CAIR was remanded without vacatur, was only temporary and could not be relied on as permanent and enforceable emission reductions for SIP approval purposes. Sierra Club also states that the Court's decision in *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012) does not extend the life of CAIR and does not make CAIR a permanent and enforceable measure on which the state or EPA can rely. Therefore, the commenters state that EPA should disapprove this sub-element of Missouri's SIP.

Response 2: EPA agrees that all control measures in a SIP must be enforceable based on the requirements of CAA section 110(a)(2)(A). EPA disagrees, however, that CAIR is not enforceable at this time, given the scope of the court's order in *EME Homer City* and the issuance of the mandate in that case.

On May 12, 2005, EPA published CAIR, which requires significant reductions in emissions of SO₂ and NO_x from electric generating units (EGUs) to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form secondarily in the atmosphere (76 FR 70093). The D.C. Circuit initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). In response to the Court's decision, EPA issued the Cross State Air Pollution Rule (CSAPR) to address the interstate transport of NO_x and SO₂ in the eastern United States (76 FR 48208, August 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision vacating CSAPR, *EME Homer City Generation v. EPA*, 696 F.3d 7.² In that decision, it also ordered EPA to continue administering CAIR, "pending . . . development of a

² On March 29, 2013, EPA and other parties filed petitions seeking Supreme Court review of the D.C. Circuit decision.

valid replacement rule" (*Id.* at 38).

The direction from the D.C. Circuit in *EME Homer City* ensures that the reductions associated with CAIR will be enforceable and in place for a number of years. EPA has been ordered by the court to develop a new rule and the opinion makes clear that after promulgating the new rule, EPA must provide states an opportunity to draft and submit SIPs to implement that rule. CAIR thus will remain in force until EPA has promulgated a final rule through a notice-and-comment rulemaking process, states have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a Federal Implementation Plan (FIP) if appropriate. In the meantime, neither the State nor EPA has taken any final action to remove the CAIR requirements from the Missouri SIP. These SIP provisions remain in place and are Federally enforceable.

Further, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR "might be more severe now in light of the reliance interests accumulated over the intervening four years" (*EME Homer City*, 696 F.3d at 38). The accumulated reliance interests include the interests of the states who reasonably assumed they could rely on reductions associated with

CAIR to meet the requirements of the Regional Haze Rule and, in turn, the requirements of Prong 4 of section 110

(a) (2) (D) (i) (II) .

The proposed and final EPA actions cited by the Commenter as support for its argument that EPA has considered CAIR to be temporary all pre-date the vacatur of CSAPR and were based on EPA's expectation that CSAPR would be the replacement for CAIR, and thus CAIR would end soon.³ At the time of these actions, CAIR was reasonably expected to sunset by operation of law in a fairly short timeframe. That background assumption no longer applies. Based on the vacatur of CSAPR and the Court's related decision to keep CAIR in place, EPA believes that it is appropriate at this time to rely on CAIR emission reductions as permanent and enforceable SIP measures while a valid replacement rule is developed and until implementation plans complying with any such new rule are submitted by the States and acted upon by EPA or until the *EME Homer City* case is resolved in a way that provides different direction regarding CAIR and CSAPR.

EPA is taking final action to approve the infrastructure SIP

³ On August 21, 2012, the D.C. Circuit issued an opinion to vacate CSAPR and keep CAIR in place pending promulgation of a valid replacement rule. However, the court also ordered the Clerk to withhold issuance of the mandate until seven days after disposition of any timely petition for rehearing or rehearing en banc. All petitions for rehearing were denied on January 24, 2013, and the mandate was issued by the D.C. Circuit on February 4, 2013. As noted above, EPA and other parties subsequently filed petitions seeking Supreme Court review of the D.C. Circuit decision.

submission with respect to prong 4 because Missouri's regional haze SIP, to which EPA has given limited approval in combination with its SIP provisions to implement CAIR, adequately prevents sources in Missouri from interfering with measures adopted by other states to protect visibility during the first planning period. While EPA is not at this time proposing to change the June 7, 2012, or June 26, 2012, limited disapproval and limited approval of Missouri's regional haze SIP, EPA expects to propose appropriate action regarding this SIP, if necessary, upon final resolution of the *EME Homer City* litigation. A more detailed rationale to support EPA's approval of prong 4 for Missouri's 1997 and 2006 PM_{2.5} infrastructure submission can be found in EPA's proposed rulemaking for today's final action (78 FR 21281).

Comment 3: The NPCA commented that EPA cannot approve portions of the Missouri infrastructure SIP submissions addressing the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to visibility because these submittals rely on CAIR, and CAIR cannot meet the BART or reasonable progress requirements of the visibility program. NPCA argues that to meet the requirements of the visibility prong of section 110(a)(2)(D)(i)(II), EPA must direct Missouri to develop an implementation plan that meets the BART and reasonable progress requirements of the regional haze rule. In particular, NPCA

raised a number of legal arguments in support of its position that section 169A of the CAA requires source-specific BART determinations for power plants and does not allow states to adopt alternative programs, such as CAIR, in lieu of these source-specific requirements. The NPCA also stated that CAIR cannot be used to shield sources from review under the CAA's reasonable progress requirements. NPCA commented that in the absence of a source-specific review to determine reasonable progress measures, it is not possible to determine whether CAIR will fulfill the reasonable progress requirements, assuming it could overcome the lack of enforceability of the program.

Response 3: The visibility prong of section 110(a)(2)(D)(II) of the CAA requires SIPs to "contain adequate provisions . . . prohibiting . . . any source . . . within the state from emitting any air pollutant in amounts which will . . . interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter . . . to protect visibility." We interpret this provision of section 110 of the CAA as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states. This is consistent with the requirements in the regional haze program which explicitly require each state to address its share of the

emission reductions needed to meet the reasonable progress goals for surrounding Class I areas (40 CFR 51.308(d)(3)(i); *see also* 77 FR 11958, 11962, February 28, 2012). Given this explicit requirement in the regional haze rule, states may satisfy the visibility prong of section 110(a)(2)(D)(II) through an EPA-approved regional haze SIP. EPA issued a limited approval of Missouri's regional haze plan on June 26, 2012, having determined, among other things, that the SIP submittal provided sufficient evidence to demonstrate that its long-term strategy includes all measures necessary to obtain its share of emission reductions needed to address the impacts of Missouri's emissions sources on Class I areas in other states (77 FR 38007, 38009).

In its comments, however, NPCA argues that important elements of Missouri's approved regional haze SIP do not meet the requirements of section 169A of the CAA. EPA disagrees with the Commenter that the CAA does not allow states to rely on an alternative program such as CAIR in lieu of source-specific BART. EPA's regulations allowing states to adopt alternatives to BART that provide for greater reasonable progress, and the Agency's determination that states may rely on CAIR to meet the BART requirements, have been upheld by the D.C. Circuit, *Utility Air Regulatory Group v. EPA*, 471 F.3d 1333 (D.C. Cir. 2006) as meeting the requirements of the CAA. We also note that the

regional haze regulations do not require a source-specific analysis of controls for reasonable progress. Even assuming, however, that the Missouri regional haze SIP improperly relied on CAIR to meet the BART and reasonable progress requirements, the NPCA has not shown that the State's plan does not comply with section 110(a)(2)(D)(i).

III. Summary of Final Action

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 PM_{2.5} NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Missouri's SIP, EPA believes that Missouri has the infrastructure to address all applicable required elements of sections 110(a)(1) and (2) (except otherwise noted) to ensure that the 1997 and 2006 PM_{2.5} NAAQS are implemented in the state. Therefore, EPA is taking final action to approve Missouri's infrastructure SIP submissions for the 1997 and 2006 NAAQS for PM_{2.5} for the following section 110(a)(2) elements and sub-elements: (A), (B), (C), (D)(i)(II) (prongs 3 and 4), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). In addition, EPA is approving two SIP submissions, one addressing the Prevention of Significant Deterioration (PSD) program in Missouri as it relates to PM_{2.5},

and another SIP revision addressing the requirements of section 128 of the CAA, both of which support the requirements associated with infrastructure SIPs.

IV. Statutory and Executive Order Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian

country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**FEDERAL REGISTER** OFFICE: INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE **FEDERAL REGISTER**]. Filing a petition for reconsideration by the Administrator of this final rule does not

affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Particulate matter, Reporting and recordkeeping requirements.

Dated: June 10, 2013.

Mark Hague,
Acting Regional Administrator,
Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA - Missouri

2. In § 52.1320:

a. The table in paragraph (c) is amended by adding a new Chapter 1 heading in numerical order, adding a new entry 10-1.020 (1) and (2), and revising the entry for 10-6.060.

b. The table in paragraph (e) is amended by adding new entries (58), (59) and (60) in numerical order at the end of the table.

The additions read as follows:

§ 52.1320 Identification of plan.

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(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
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Missouri Department of Natural Resources				
Chapter 1- Organization				
10-1.020 (1) and (2)	Commission Voting and Meeting Procedures	7/30/1998	<u>[INSERT DATE OF Federal Register PUBLICATION]</u> <u>[INSERT Federal Register PAGE NUMBER WHERE THE DOCUMENT BEGINS]</u>	
* * * * *				
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
* * * * *				
10-6.060	Constructi on Permits Required	9/30/2012	<u>[INSERT DATE OF Federal Register PUBLICATION]</u> <u>[INSERT Federal Register PAGE NUMBER WHERE THE DOCUMENT BEGINS]</u>	<p>Provisions of the 2010 PM_{2.5} PSD - Increments, SILs and SMCs rule (75 FR 64865, October 20, 2010) relating to SILs and SMCs that were affected by the January 22, 2013 U.S. Court of Appeals decision are not SIP approved.</p> <p>Provisions of the 2002 NSR reform rule relating to the Clean Unit Exemption, Pollution Control Projects, and exemption from recordkeeping provisions for certain sources using the actual-to-projected-actual emissions projections test are not SIP approved.</p> <p>In addition, we have not approved Missouri's rule incorporating EPA's 2007 revision of the definition of "chemical processing</p>

				<p>plants" (the "Ethanol Rule," 72 FR 24060 (May 1, 2007) or EPA's 2008 "fugitive emissions rule," 73 FR 77882 (December 19, 2008)).</p> <p>Although exemptions previously listed in 10 CSR 10-6.060 have been transferred to 10 CSR 10-6.061, the Federally-approved SIP continues to include the following exemption, "Livestock and livestock handling systems from which the only potential contaminant is odorous gas."</p> <p>Section 9, pertaining to hazardous air pollutants, is not SIP approved.</p>
* * * * *				

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§ 52.1320 Identification of plan.

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(e)***

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
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(58) Section 110(a)(2) Infrastructure Requirements for the 1997 PM _{2.5} NAAQS	Statewide	2/27/2007	[<u>INSERT DATE OF PUBLICATION IN Federal Register</u>] [<u>INSERT CITATION OF PUBLICATION</u>]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) prongs 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
(59) Section 110(a)(2) Infrastructure Requirements for the 2006 PM _{2.5} NAAQS	Statewide	12/28/2009	[<u>INSERT DATE OF PUBLICATION IN Federal Register</u>] [<u>INSERT CITATION OF PUBLICATION</u>]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) prongs 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
(60) Section 128 Declaration: Missouri Air Conservation Commission Representation and Conflicts of Interest Provisions; Missouri Revised Statutes (RSMo) RSMo 105.450, RSMo 105.452, RSMo 105.454, RSMo 105.462, RSMo 105.463, RSMo 105.466, RSMo 105.472, and RSMo 643.040.2	Statewide	8/08/2012	[<u>INSERT DATE OF PUBLICATION IN Federal Register</u>] [<u>INSERT CITATION OF PUBLICATION</u>]	